

THE COURT OF APPEALS OF THE STATE OF
WASHINGTON, DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

TRINNEL ANTHONY DIAL

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

APPELLANT'S OPENING BRIEF

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A. INTRODUCTION

Tacoma Police charged Trinnel Dial ("Mr. Dial") with one count of Kidnapping in the First Degree, one count of Unlawful Possession of a Firearm in the First Degree, one count of Felony Harassment and one count of Assault in the Second Degree. All charges occurred between August 18-19, 2021 and involved his girlfriend, Mary Trobee ("Ms. Trobee"). A jury convicted Mr. Dial of Unlawful Possession of a Firearm in the First Degree, but found him not guilty on the remaining three charges. This timely appeal follows.

B. ASSIGNMENTS OF ERROR

1. The trial court erred by denying Mr. Dial's motion to suppress his confession because he was delusional and the Police read the rights at a fast speed, making his waiver of *Miranda* rights involuntary.
2. The state failed to prove that Mr. Dial knowingly possessed a firearm, an essential element of

Unlawful Possession of a firearm in the first degree.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court err by denying Mr. Dial's motion to suppress his confession when he was delusional, the Police read the rights at a fast speed, and Mr. Dial was not cable of making a knowing, voluntary and intelligent waiver of *Miranda* rights?

2. Did the state fail to prove that Mr. Dial knowingly possessed a firearm, an essential element of Unlawful Possession of a firearm in the first degree where Mr. Dial stumbled across the gun after opening an unidentified black bag to reveal the gun?

D. STATEMENT OF THE CASE

Mr. Dial and Ms. Trobee began dating in November, 2020. RP 232. ("RP" refers to the pages of the Record of Proceedings). Mr. Dial often used methamphetamine and

developed an addiction to it. Because of the heavy drug use, Ms. Trobee characterized Mr. Dial's behavior as "drug-induced psychosis". Ms. Trobee described that while in this condition, Mr. Dial physically and mentally deteriorated. Mr. Dial exhibited extreme paranoia that made him irrationally fearful of mundane things, such as white cars. Mr. Dial often thought the people that drove the white cars were "coming after him". Mr. Dial also exhibited delusional behavior, such as seeing people that nobody else could see and suffering physical pain "from things that weren't there". RP 232-235, 274-280.

When high on methamphetamine, Mr. Dial also became angry and aggressive toward Ms. Trobee, making her fearful of him. When Mr. Dial used drugs, Ms. Trobee saw in Mr. Dial's "eyes and his demeanor" that "he had no soul". RP 233. Mr. Dial's anger and aggressiveness "escalated" and "kept getting more intense" with every use of methamphetamine. RP 291.

In the late evening of August 18, 2021, Mr. Dial walked into Ms. Trobee's apartment as she was taking the garbage out. RP 254-255. Delusional from drug use, Mr. Dial asked Ms. Trobee "why is there a line of men outside your door here to sleep with you?" RP 255. Mr. Dial also asked Ms. Trobee why "Timmy" was in the apartment with her, despite nobody else being there but Ms. Trobee and her two children. Id. Notwithstanding assurances from Ms. Trobee that nobody named "Timmy" was there, Mr. Dial insisted "I see him". Id.

Mr. Dial noticed a bag that was on the ground in the living room of Ms. Trobee's apartment. Id. When Mr. Dial asked her whose bag it was, Ms. Trobee replied she thought it was his. Mr. Dial sometimes had homeless friends come to the apartment to clean themselves up or take a shower. RP 280. Both assumed the bag had been left there by one of Mr. Dial's homeless friends. Id.

When Ms. Trobee went to the bathroom, Mr. Dial opened up the bag and found an unloaded handgun inside. RP 255-256. As Ms. Trobee returned from the bathroom, she saw Mr. Dial "flailing" and "winging" the gun around with his hands while talking. RP 256. Fearful that Mr. Dial had a gun while in a delusional state, Ms. Trobee called the police. Id.

The police arrived minutes after Ms. Trobee called 911 and asked Mr. Dial to step outside. Mr. Dial complied and the police "sat him down on the bench" outside the apartment. Officer Jonathon Douglas ("Officer Douglas"). 309 When the police asked Mr. Dial if there was anyone else in the apartment with him, Mr. Dial told them he and "Timmy" were in the apartment together. RP 342, 359. The police called out to "Timmy", but nobody answered or came out of the apartment. Id. The police did a sweep of the apartment to look for "Timmy", but did not find him. Id.

While sitting on the bench outside the apartment, Mr. Dial told them "Timmy" walked out of the apartment and now stood in front of the trees near the parking lot. RP 359. Mr. Dial repeatedly asked the police, "do you see him?" RP 323. However, the police did not see "Timmy" walk out the apartment or standing outside by the trees. RP 358-360, 373.

Officer Douglas noted that prior to his arrest, the police "were probably not going to let him walk away at this point". RP 317. While talking with Mr. Dial, the police noticed a "bulge" in his right pocket. When they asked Mr. Dial about the bulge, he told them it was the handgun he found in Ms. Trobee's apartment.

While detained, the police investigated Mr. Dial's criminal record and determined he had a prior felony conviction. Officer Douglas read Mr. Dial Miranda warnings

and then placed Mr. Dial under arrest for unlawful possession of a firearm. RP 318.

The trial court conducted a 3.5 hearing prior to the trial testimony of Officer Douglas. The 3.5 hearing only concerned matters that occurred during and after Officer Douglas gave Miranda warnings to Mr. Dial. RP 335.

Officer Douglas testified that despite Mr. Dial talking about seeing "Timmy, " no such person was there. Officer Douglas "didn't see anybody inside the apartment...[n]obody came in...[a]nd then after that, [Mr. Dial] referred across the way...[to the] little field there at the Westside -- two trees -- he referred to him as 'Timmy'." RP 323. Despite him seeing "invisible people", Officer Douglas did not have concerns about Mr. Dial's mental capacity or mental competency. RP 324. Officer Douglas then read Miranda warnings to Mr. Dial "word for word" from a card. RP 310. While defense counsel reviewed the body camera

footage with him, Officer Douglas testified he read the 82-word Miranda warning to Mr. Dial in 17 seconds. RP 326.

After reading the warnings, Officer Douglas inquired if the delusional Mr. Dial understood the rights. RP 320-321. Officer Douglas stated he had no concern that Mr. Dial did not "understand what was going on at that point in time." RP 323-324. After Mr. Dial indicated he understood his Miranda rights, the police interrogated him. When police asked if Mr. Dial "knew that as a convicted felon, he broke the law by carrying a firearm", Mr. Dial told them "yes". RP 321.

Oral argument took place after the 3.5 hearing. Defense counsel argued that the "delivery [of Miranda warnings] plus questions of mental capacity, weigh or mitigate in favor of suppression of post-Miranda statements" made by Mr. Dial. RP 334.

The trial court reviewed the evidence under the preponderance standard and issued both a written and verbal ruling. RP 335. In its verbal ruling, the trial court opined:

I'll be honest; I think this is a close call. I do think that I am more concerned, I think, about the speed at which it's read. I don't know that there is sufficient evidence of this idea of mental incapacity or whatever term people are using.... [s]o I am concerned about the speed. It is quite fast. The standard here is preponderance of the evidence on Miranda. If it was anything higher than that, I think I would be ruling differently, but I'm going to rule that they are admissible. It's a very close call in my mind, but only because it's preponderance. If it was a higher standard than that, I would not rule the same way.

RP. 334-335.

The trial court ruled the statements made by Mr. Dial after advisement of Miranda warnings were admissible, even though the Miranda warnings were "barely" sufficient. *Id.* Defense counsel did not object to the trial court's ruling. *Id.*

E. ARGUMENT

1. THE TRIAL COURT ERRED BY DENYING MR. DIAL'S MOTION TO SUPPRESS ALL OF THE STATEMENTS TO POLICE BECAUSE HE WAS IN CUSTODY PRIOR TO BEING ADVISED OF MIRANDA, AND WHEN ADVISED OF MIRANDA, MR. DIAL INVOLUNTARILY GAVE STATEMENTS DUE TO HIS MENTAL STATE AND THE SPEED AT WHICH THE WARNINGS WERE READ BY POLICE.

The trial court erred when it denied Mr. Dial's motion to suppress his statements to police because the police interrogated him while in custody before being administered *Miranda* warnings, and, once administered *Miranda* warnings, the evidence was insufficient that Mr. Dial could make a knowing, voluntary and intelligent waiver of those rights.

c. Custodial Interrogation

The Supreme Court devised Miranda warnings to protect a defendant's constitutional right not to make incriminating confessions or admissions to police while in the coercive environment of police custody. *State v. Heritage*, 152 Wn.2d 210, 214, 95 P.3d 345 (2004); *State v. Harris*, 106 Wn.2d 784, 789, 725 P.2d 975 (1986), *cert. denied*, 480 U.S. 940, 107 S.Ct. 1592, 94 L.Ed.2d 781 (1987). Police must give *Miranda* warnings when a suspect endures (1) custodial (2) interrogation (3) by an agent of the State. *State v. Sargent*, 111 Wn.2d 641, 647, 762 P.2d 1127 (1988) (citing *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)). Without *Miranda* warnings, a suspect's statements during custodial interrogation are presumed involuntary. *Sargent*, 111 Wn.2d at 647–48. Mr. Dial was in custody and interrogated by police.

In *Miranda*, the United States Supreme Court defined

custodial interrogation as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda*, 384 U.S. at 444, 86 S.Ct. 1602. In *Berkemer v. McCarty*, 468 U.S. 420, 104 S. Ct. 3138, 82 L.Ed.2d 317 (1984), the United States Supreme Court refined the definition of "custody." The court developed an objective test—whether a reasonable person in a suspect's position would have felt that his or her freedom was curtailed to the degree associated with a formal arrest. *Berkimer*, at 441–42, 104 S. Ct. 3138. Washington has adopted this test. See *State v. Short*, 113 Wn.2d 35, 40, 775 P.2d 458 (1988).

As an initial matter, Mr. Dial suffered from drug induced delusions during the custodial interrogation and arrest. Because of that, Mr. Dial was not reasonable person in this situation. However, the inquiry espoused by the Supreme Court is "if a reasonable person in Mr. Dial's

position would have understood his freedom was curtailed", not Mr. Dial himself. *Berkimer*, at 441–42, 104 S.Ct. 3138.

At the 3.5 hearing, Officer Douglas testified that he "sat [Mr. Dial] down" and his partner, Officer Frank, asked Mr. Dial if he had a firearm in his right pocket. This occurred prior to giving Mr. Dial *Miranda* warnings. RP 316. Mr. Dial answered "yes" in response to Officer Frank's question. *Id.* Officer Douglas testified that during this investigation of Mr. Dial, the police "had never told Mr. Dial he was under arrest or that he's not free to leave". RP 317. However, the record shows that Mr. Dial was not free to leave and that Officer Douglas contradicted himself.

First, Officer Douglas testified that they "sat [Mr. Douglas] down" on a bench outside the apartment during the investigation. RP 309. It is notable that the second time Officer Douglas used the phrase "we sat him back down", the police had arrested Mr. Dial. RP 310. Officer Douglas'

testimony that "we sat him down", implies that police commanded Mr. Dial to sit, and that it was not a request or choice to do so.

Officer Douglas then confirmed that Mr. Dial was in custody when Mr. Dial confirmed that there was a gun in his right pocket. Again, this occurred prior to Miranda warnings. In response to the state's question, "is [Mr. Dial] free to leave", Officer Douglas responded that they "were probably not going to let [Mr. Dial] walk away at this point." RP 317.

A reasonable person in Mr. Dial's position would have felt their "freedom curtailed" during the custodial interrogation. *Berkimer*, at 441–42, 104 S.Ct. 3138. A reasonable person in Mr. Dial's position would have thought they were under arrest solely because police commanded him to sit on the bench. *C.f. State v. Dent*, 184 Wn. 1042, 2014 WL 6657489 (2014) (pursuant to GR 14.1, this is cited as a nonbinding authority and may be accorded

such persuasive value as this Court deems appropriate). However, given that Officer Douglas explicitly stated at the hearing that Mr. Dial could not walk away, there can be little doubt that police's "investigation" of Mr. Dial was actually an arrest. Police curtailed Mr. Dial's freedom to where a reasonable person would think they are under arrest. *Sargent*, 111 Wn.2d at 647–48.

The confirmation to the police by Mr. Dial that he had a gun in his right pocket, prior to the advisement of *Miranda* warnings, was involuntary. The trial court should have suppressed this statement and not admitted at trial. *Harris*, 106 Wn.2d at 789.

b. Waiver Not Voluntary

A defendant's statements are admissible when made in a knowing, voluntary and intelligent manner after being advised of *Miranda* rights. *State v. Aten*, 130 Wn.2d 640, 663, 927 P.2d 210 (1996) (citing *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)). Courts

determine the voluntariness of a confession based on the totality of the circumstances. *Aten*, 130 Wn.2d at 663-64 (citing *State v. Rupe*, 101 Wn.2d 664, 679, 683 P.2d 571 (1984)).

A defendant's statement is only voluntary if the circumstances establish he exercised free will in deciding to waive his rights to speak to police. *State v. Broadaway*, 133 Wn.2d 118, 132, 942 P.2d 363 (1997). Factors to consider in determining whether a defendant exercised free will include the defendant's mental abilities, physical condition, age, experience, and police conduct. *Aten*, 130 Wn.2d at 664 (citing *Rupe*, 101 Wn.2d at 679).

Appellate courts review a trial court's findings of fact of voluntariness under the substantial evidence standard. *State v. Ng*, 110 Wn.2d 32, 37, 750 P.2d 632 (1988). The substantial evidence standard requires the evidence to be sufficient enough "to persuade a rational, fair-minded

person of the truth of the finding." *Blackburn v. State*, 186 Wn.2d 250, 256, 375 P.3d 1076 (2018). Appellate courts review conclusions of law de novo. *Blackburn*, 186 Wn.2d at 256.

The record established the effects of Mr. Dial's heavy addiction to methamphetamine on his mental capacity. Ms. Trobee testified that when Mr. Dial used methamphetamine, he displayed what she characterized as being in a "drug-induced psychosis". RP 232-235, 274-280. In this state, Mr. Dial physically and mentally changed, looking "almost like he had no soul". *Id.* While under the effects of methamphetamine, Mr. Dial also exhibited paranoia, jealousy, suffered physical pain "from things that weren't there", feared white cars, and had delusions of seeing people that were not present. RP 232-235, 274-280.

Mr. Dial displayed delusional and paranoid behavior while speaking with the police during his arrest. Mr. Dial repeatedly told police about an imaginary person named "Timmy". RP 358-360. Initially, Mr. Dial told the police he and "Timmy" were in Ms. Trobee's apartment together. RP 342, 359. Officer Douglas called out to "Timmy" but nobody answered or came out of the apartment. Id. Officer Douglas then looked inside the apartment to find "Timmy", but did not see anybody else. Id.

After Mr. Dial walked outside of the apartment to talk with the police, "Timmy" also left the apartment and stood in front of the trees. RP 359. Mr. Dial repeatedly asked the police, "do you see him?" RP 323. However, the police did not see "Timmy" walk out the apartment or standing outside by the trees. RP 358-360.

Once outside, the police questioned Mr. Dial about the bulge in his right pocket. Prior to administering

Miranda, Mr. Dial told them the bulge was a firearm. After determining Mr. Dial had a felony conviction, police placed him under arrest and Officer Douglas read him *Miranda* warnings off of a card. The record shows that Officer Douglas read the *Miranda* warnings at a "quite fast speed", saying the 82 words from the card in 17 seconds. RP 326.

After reading the *Miranda* warnings at "a very fast pace" Officer Douglas inquired if Mr. Dial understood the rights. RP 320-321. Mr. Dial answered "yes", and Officer Douglas stated that there was "no concern from Mr. Dial that he didn't understand what was going on at that point in time." *Id.* Police then interrogated Mr. Dial by asking if he knew that as a convicted felon, he broke the law by carrying a firearm. *Id.* Mr. Dial, seeing people that were not there, replied "yes". *Id.*

In its decision, the trial court expressed concern over the police's conduct in how fast Officer Douglas read the

Miranda warnings to Mr. Dial. However, the trial court did not address those concerns in the context of Mr. Dial's delusions and his mental capacity to waive those rights voluntarily. Although the trial court acknowledged Mr. Dial's delusional state in its findings, it did not give them any weight. The trial court opined, "I don't know that there is sufficient evidence of this idea of mental incapacity or whatever term people are using."

Considering the totality of the circumstances, Mr. Dial's did not waive *Miranda* rights voluntarily. Mr. Dial suffered from delusions and hallucinations because of extensive methamphetamine use. While in this state, Mr. Dial saw people and things that were not there, was paranoid and felt pain from imaginary sources. Testimony from Officer Douglas and Ms. Trobee, two witnesses that directly observed Mr. Dial at the time of the arrest, testified that Mr. Dial was delusional and made little sense. Both witnesses testified Mr. Dial saw the non-existent "Timmy"

while in the apartment and then again outside near the trees.

While the fact that Mr. Dial took drugs would not, by itself, render his confession involuntary, courts must look to "the entire situation surrounding the giving of the statement," *State v. Lewis*, 19 Wn. App. 35, 573 P.2d 1347 (1978); *State v. Sergeant*, 27 Wn. App. 947, 621 P.2d 209 (1980). Here, the trial court erred because it did not "look to the entire situation" and disregarded that Mr. Dial was in a delusional mental state. *Id.* While delusional, Mr. Dial was susceptible to suggestion from police. Police capitalized on Mr. Dial's vulnerability by rapidly reading him Miranda warnings and then asking him if he understood them. Despite being visibly delusional, Police had no concern about Mr. Dial's mental capacity or mental competency when he told them he waived those rights. RP 324.

For these reasons, the trial court should have suppressed Mr. Dial's statement. *State v. Rhoden*, 189 Wn. App. 193, 199, 356 P.3d 242 (2015) (citing *Miranda*, 384 U.S. at 476). This court should reverse the conviction of Mr. Dial and remand the case for a new trial. *Rhoden*, 189 Wn. App. at 203.

2. THE STATE PRESENTED INSUFFICIENT EVIDENCE THAT MR. DIAL "KNOWINGLY" POSSESSED A FIREARM.

The state failed to present sufficient evidence beyond a reasonable doubt to prove Mr. Dial could form the culpable mental state of knowledge because of intoxication by methamphetamine.

When challenging the sufficiency of the State's evidence, this Court considers "whether any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt." *State v. Drum*, 168 Wn.2d 23, 34-5, 225 P.3d 237 (2010) (quoting *State v. Wentz*, 149 Wn.2d 342, 347, 68 P.3d 282 (2003)). In claiming

insufficient evidence on appeal, "the defendant necessarily admits the truth of the State's evidence and all reasonable inferences that can be drawn from it". *Drum*, 168 Wn.2d at 35.

The State charged Mr. Dial with Unlawful Possession of a Firearm in the first degree under RCW 9.41.0409(1)(a). To prove Mr. Dial committed the offense, the state had to prove that Mr. Dial knowingly possessed or controlled a firearm, that a court previously convicted him of a serious offense, and that the possession or control of the firearm occurred in the State of Washington. CP 82.

Knowledge is one of the four mental states that is considered when assessing criminal culpability of defendants. RCW 9A.08.010. A person knows or acts knowingly or with knowledge when:

(i) [h]e or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or

(ii) [h]e or she has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense.

Id. Knowledge is a requisite element of unlawful possession of a firearm. *State v. Anderson*, 141 Wn.2d 357, 359, 5 P.3d 1247 (2000).

Intoxication may be a factor that a jury considers when determining the criminal culpability of a defendant. Intoxication refers to impaired mental and bodily condition caused by either alcohol or drugs. *State v. Dana* 73 Wn.2d 533, 439 P.2d 403 (1968). Under RCW 9A.16.090,

[n]o act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his or her condition, but whenever the actual existence of any particular mental state is a necessary element to constitute a particular species or degree of crime, the fact of his or her

intoxication may be taken into consideration in determining such mental state.

Here, Mr. Dial's drug use and resultant delusional state nullified the knowledge element needed to prove the unlawful possession of the handgun. While at Ms. Trobee's apartment, Mr. Dial pointed to the bag in Ms. Trobee's apartment and asked her whose it was. While in the delusional state, Mr. Dial opened the bag and found a handgun inside. Mr. Dial and Ms. Trobee discussed who the handgun belonged to, and both denied that it was theirs. RP 294. Mr. Dial put the handgun in his right pocket and exited the apartment to talk with the police. RP 320-342.

Mr. Dial's "drug-induced" psychosis from heavy methamphetamine use rendered him intoxicated while in possession of the handgun. Trial testimony from Ms. Trobee established that Mr. Dial displayed extreme paranoia and jealousy, suffered physical pain "from things

that weren't there", feared white cars, and had delusions of seeing people that were not really there, like "Timmy".

Given the testimony of both Ms. Trobee and Officer Douglas about Mr. Dial seeing "Timmy", the record shows Mr. Dial experienced these delusional symptoms while in possession of the handgun. As a result, Mr. Dial was not a "reasonable person" nor could he have been "aware of the fact, facts or circumstances" that he possessed the handgun. RCW 9A.08.010. Heavy methamphetamine drug use rendered Mr. Dial extremely intoxicated and negated the culpable state of knowledge. Without establishing the element of knowledge, the state's conviction of Mr. Dial for unlawful possession of a firearm in the first degree was legally insufficient.

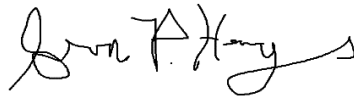
F. CONCLUSION

Mr. Dial respectfully requests that this Court reverse the conviction and dismiss the charge against him with

prejudice. Alternatively, Mr. Dial requests reversal and remand for a new trial.

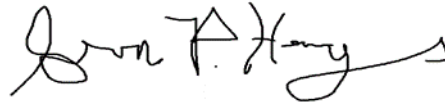
DATED this 16th day of November, 2022.

Pursuant to RAP 18.17(b), I certify that the word count in Appellant's Opening Brief is 4,428.

A handwritten signature in black ink, appearing to read "Shawn P. Hennessy". The signature is fluid and cursive, with the first name "Shawn" and last name "Hennessy" clearly distinguishable.

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I, Shawn P. Hennessy, a person over the age of 18 years of age, served the Pierce County Prosecutor Kristie Barham at kristie.barham@piercecounitywa.gov and pcpatcecf@piercecounitywa.gov , and Steven Trinnel Dial, DOC No.: 807995, at Washington Corrections Center (WCC) PO Box 900 Shelton, WA 98584 true copy of the document to which this certificate is affixed on November 16, 2022. Service was made electronically to the prosecutor and by United States mail to Trinnel Dial by depositing in the mails of the United States of America, properly stamped and addressed.



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